1. Scope of application

The terms and conditions below govern all supplies, services and offers of Poly-clip System GmbH & Co. KG in all countries. These general conditions of sale and delivery shall also apply to the customer, in particular to any subsidiary or company, and to all third parties acting on the customer’s instructions, even if the customer is not named. Where these terms and conditions are not explicitly determined, the conditions of the corresponding supplier of Poly-clip System GmbH & Co. KG shall apply. The terms and conditions of the customer shall be invalid unless specifically acknowledged by Poly-clip System GmbH & Co. KG. Poly-clip System GmbH & Co. KG is entitled to amend all offers, orders and contracts at any time. The customer’s rights to amend or cancel existing orders are regulated separately.

2. Closing, scope of performance

2.1. Poly-clip System GmbH & Co. KG’s offers refer to the goods and services in the customer’s order, excluding a delivery or performance of any accessory item unless expressly included in the order.

2.2. The scope of Poly-clip System GmbH & Co. KG’s offers is set forth in the confirmation for a given order; these offers are not subject to an additional order term.

2.3. The customer bears the costs as well as the risks of shipping.

3. Rates

3.1. The rate schedule referenced and in effect at the time of ordering.

3.2. Poly-clip System GmbH & Co. KG is not bound by stated rates if the agreed delivery period exceeds four months from the order date.

3.3. If no fixed rates have been agreed, Poly-clip System GmbH & Co. KG will provide for the purchase price and all other charges.

3.4. Poly-clip System GmbH & Co. KG is entitled to an adequate grace period for remedial performance (replacement, repair, or modification). This period is subject to the conditions specified in item 7, which applies accordingly to claims of warranty and reimbursement of expenditures made in vain.

4. Terms of payment

4.1. Unless otherwise agreed, the purchase price is due and payable upon the delivery of goods.

4.2. Starting on the due date, Poly-clip System GmbH & Co. KG may charge interest on payments in arrears according to applicable law. Once default sets in, Poly-clip System GmbH & Co. KG may charge default interest according to applicable law.

4.3. Poly-clip System GmbH & Co. KG is entitled to withhold deliveries until a security deposit or advance payment has been provided or until such time as the customer has submitted an invoice.

4.4. Insofar as Poly-clip System GmbH & Co. KG accepts bills of exchange, it does so merely on a conditional basis.

4.5. Save for cases of effectively established or undisputed counter-claims, rights as to set-off are not affected.

4.6. Starting on the due date, Poly-clip System GmbH & Co. KG may charge interest on payments in arrears according to applicable law. Once default sets in, Poly-clip System GmbH & Co. KG may charge default interest according to applicable law.

5. Retention of title

5.1. The retention-of-title clause below is intended to secure all of Poly-clip System GmbH & Co. KG’s current and future claims arising from the purchase relationship and all claims under a given contractual relationship. Poly-clip System GmbH & Co. KG’s other rights, including but not limited to claims for damages on account of the customer’s default in acceptance, are not affected.

5.2. In all other respects, Poly-clip System GmbH & Co. KG’s liability for damages, even to the extent that material and legal defects are present in the goods provided, is limited to the amount of the purchase price of the defective object of delivery.

5.3. The customer must store any reserved goods in Poly-clip System GmbH & Co. KG’s property until payment of all secured claims has been made in full. Unless they are sold to a third party, Poly-clip System GmbH & Co. KG is entitled to sell the reserved goods and to apply the proceeds toward the claims owed in accordance with the terms and conditions below.

5.4. In the event of a resale of such goods, the customer may reserve such goods only in the regular course of business; reserved goods may be neither pledged nor assigned by way of security.

5.5. In the event of the resale of such goods, the customer hereby assigns to Poly-clip System GmbH & Co. KG, and Poly-clip System GmbH & Co. KG accepts, the resulting claim against the customer’s buyer, and the same applies to other rights arising from the place of delivery to the extent of reserved goods, such as insurance claims or claims based on tort in cases of loss or destruction. The assigned claim serves purposes of security for Poly-clip System GmbH & Co. KG’s benefit to the same extent that the goods have been reserved.

5.6. The customer is authorized to collect the assigned claim, but may assign it to third parties, including by way of factorization to banking firms, only with Poly-clip System GmbH & Co. KG’s prior written consent. Poly-clip System GmbH & Co. KG is entitled to instruct the seller to inform the customer of any collection of the claim by Poly-clip System GmbH & Co. KG. As soon as it finds itself in default, however, the customer is obligated to inform its buyer in writing that the claim has been assigned to Poly-clip System GmbH & Co. KG.

5.7. Poly-clip System GmbH & Co. KG will release reserved goods as well as any item or claim taking their place only after the customer has fully paid all secured claims by more than 50%, selecting the items to be released in its own discretion.

5.8. If in the course of the customer’s breach of contract, including but not limited to default in payment, Poly-clip System GmbH & Co. KG is entitled to (i) take possession of the goods or (ii) destroy the goods, it may demand that the customer surrender the reserved goods.

6. Liability

6.1. Poly-clip System GmbH & Co. KG warrants the absence of material and legal defects from its supplies subject to the below provisions. Its liability for defects expires twelve months from the transfer of risk. § 434 (1) no. 2 of the German Civil Code (BGB) applies accordingly to claims of warranty.

6.2. Poly-clip System GmbH & Co. KG’s warranty obligations are contingent on the customer’s satisfaction of its duty to examine goods and report defects. In cases of obvious defects, the obligation to be raised within three calendar days from delivery. In cases of hidden defects, objections are to be raised within three (3) calendar days from delivery.

6.3. Objections based on the absence of defects must be made in writing and include a detailed description of the defect encountered.

6.4. Poly-clip System GmbH & Co. KG is entitled to an adequate grace period for remedial performance (replacement, repair, or modification). This period is subject to the conditions specified in item 7, which applies accordingly to claims of warranty and reimbursement of expenditures made in vain.

6.5. The spare parts introduced – i.e., supplied, installed or replaced – as part of Poly-clip System GmbH & Co. KG’s warranty for defects are subject to the warranty period for the repaired object of purchase as well as the appropriate commencement thereof. Unless they are no longer subject to retention of title, replaced parts become the property of Poly-clip System GmbH & Co. KG.

6.6. In cases of justified objections to the remedial performance performance, Poly-clip System GmbH & Co. KG is further entitled to make such modifications to goods or services as may be necessary as a result of defects, provided that the customer incurs no additional cost and no significant change is made to the contractually agreed performance. The customer will assist Poly-clip System GmbH & Co. KG with the removal of defects to a reasonable degree.

6.7. The warranty lapses if and when the customer repairs, modifies or otherwise alters goods without Poly-clip System GmbH & Co. KG’s consent and such actions could not have been foreseen at the time of closing, deadlines and delivery dates are pushed back by a reasonable phase-out period. Insofar as the delay in acceptance of supplies or services would place an unreasonable burden on the customer, it may rescind the contract by promptly issuing a written notice to that effect to Poly-clip System GmbH & Co. KG.

6.8. The customer may rescind the contract or proportionately abate the purchase price only after remedial performance has failed to remove the defect. The right of rescission is ruled out whenever the value or thesis for use of the goods is affected only to a minor degree. Likewise, the customer may not rescind the contract if it is in default in acceptance or bears responsibility for the delay in acceptance.

6.9. The customer may demand damages subject to the conditions specified in item 7, which applies accordingly to claims of warranty and reimbursement of expenditures made in vain, which the customer may assert in stead of damages in lieu of performance.

6.10. Even after the lapse of the warranty period, the customer must promptly notify Poly-clip System GmbH & Co. KG if the third party asserts that the goods or services infringe on property rights.

7. Liability

7.1. Poly-clip System GmbH & Co. KG is liable without limitation of liability for intentional misconduct or gross negligence on the part of Poly-clip System GmbH & Co. KG and its legal representatives. Poly-clip System GmbH & Co. KG’s liability is unlimited in cases of personal injury caused by Poly-clip System GmbH & Co. KG’s breach of contract or tort, as well as relating to providing advice, protection and care, which enable the customer to put the object of delivery to the contractually intended use or are designed against significant damages. The customer’s statutory right of rescission is not affected.

7.2. In all other respects, Poly-clip System GmbH & Co. KG’s liability for damages, even to the extent that material or legal defects are present in the goods provided, is limited to the amount of the purchase price of the defective object of delivery.

7.3. In all cases, Poly-clip System GmbH & Co. KG is liable for damages caused by breach of contract or tort to the extent that such damages are to be expected in the context of the intended use of the object of delivery. Poly-clip System GmbH & Co. KG shall be liable for damages caused by breach of contract or tort in the case of loss or destruction of the object of delivery or any part thereof. In all other cases, Poly-clip System GmbH & Co. KG’s liability is limited to the amount of the purchase price of the object of delivery.